

REMARKS

Claims 1-15 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 1-3, drawn to a depth sounder with automatic frequency switching, classified in Class 367, Subclass 95;

Group II, claims 4-11 and 15, drawn to a depth sounder with an alarm, classified in Class 367, Subclass 112; and

Group III, claims 12-14, drawn to a depth sounder with a help menu, classified in Class 367, Subclass 111.

In order to comply with the Examiner's Restriction Requirement, Applicants provisionally elect to prosecute Group II, directed to claims 4-11 and 15, for prosecution in the present application. Applicants reserve the right to file a Divisional application directed to the non-elected claims at a later date, if so desired.

This requirement for restriction is respectfully traversed for the reasons set forth below.

Under the provisions of M.P.E.P. § 803, the criteria which must be established for restriction between allegedly patentably distinctive inventions includes not only the requirement that (A) the inventions be independent or distinct, but also (B) there must be a serious burden on the Examiner if restriction is required (M.P.E.P. § 803 citing to M.P.E.P. § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02). In the present restriction

requirement, while the Examiner has made allegations of distinctness, the Examiner has made no allegation as to the burden on the part of the Examiner. As stated in the M.P.E.P.:

“If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.” M.P.E.P. § 803, page 800-4.

The Examiner has not alleged a burden in the present application. Further Applicants do not believe a burden should exist between Groups II and III of the Examiner's restriction requirement. Accordingly, the Examiner is respectfully requested to withdraw his restriction requirement to the extent that it requires examination of Groups II and III as separate applications.

Accordingly, in view of the above remarks, reconsideration of the requirement for restriction, and an action on the claims of at least Groups II and III in the present application, are respectfully requested.

Favorable action on the present application is earnestly solicited.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Michael K. Mutter, Registration No. 29,680, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

Michael K. Mutter, #29,680

MKM/slb
3629-0106P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000